

Withdrawal/Redaction Sheet

Clinton Library

DOCUMENT NO. AND TYPE	SUBJECT/TITLE	DATE	RESTRICTION
001a. memo	Samuel Berger & Beth Nolan to POTUS; re: SSCI Request for the PFIAB Deutch Report (3 pages)	06/16/2000	P5 1278
001b. memo	James E. Baker to Samuel R. Berger; re: SSCI's Request for PFIAB Deutch Report (1 page)	06/13/2000	P5 1279
001c. memo	James E. Baker to Samuel R. Berger; re: Response to SSCI's Request for the PFIAB Report re Deutch Investigation (1 page)	05/24/2000	P5 1280
001d. memo	Samuel Berger & Beth Nolan to POTUS; re: Response to SSCI's Request for the PFIAB Report re Deutch Investigation (4 pages)	n.d.	P5 1281
001e. memo	Samuel Berger & Beth Nolan to POTUS; re: SSCI Request for the PFIAB Deutch Report (3 pages)	n.d.	P5 1282
001f. memo	Samuel Berger & Beth Nolan to POTUS; re: SSCI Request for the PFIAB Deutch Report (3 pages)	n.d.	P5 Dup of 1282
001g. memo	Samuel Berger & Beth Nolan to POTUS; re: Response to SSCI's Request for the PFIAB Report re Deutch Investigation (5 pages)	n.d.	P5 1283

COLLECTION:

Clinton Presidential Records
NSC Records Management
[Deutch and PFIAB or Foreign Intelligence]
OA/Box Number: 3965

FOLDER TITLE:

0003228

Jimmie Purvis
2006-1004-F
jp2539

RESTRICTION CODES

Presidential Records Act - [44 U.S.C. 2204(a)]

- P1 National Security Classified Information [(a)(1) of the PRA]
- P2 Relating to the appointment to Federal office [(a)(2) of the PRA]
- P3 Release would violate a Federal statute [(a)(3) of the PRA]
- P4 Release would disclose trade secrets or confidential commercial or financial information [(a)(4) of the PRA]
- P5 Release would disclose confidential advice between the President and his advisors, or between such advisors [(a)(5) of the PRA]
- P6 Release would constitute a clearly unwarranted invasion of personal privacy [(a)(6) of the PRA]

C. Closed in accordance with restrictions contained in donor's deed of gift.

PRM. Personal record misfile defined in accordance with 44 U.S.C. 2201(3).

RR. Document will be reviewed upon request.

Freedom of Information Act - [5 U.S.C. 552(b)]

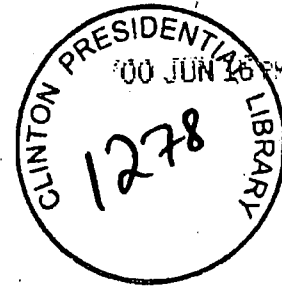
- b(1) National security classified information [(b)(1) of the FOIA]
- b(2) Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- b(3) Release would violate a Federal statute [(b)(3) of the FOIA]
- b(4) Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- b(6) Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- b(7) Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- b(8) Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- b(9) Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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3228

THE WHITE HOUSE
WASHINGTON

June 16, 2000



ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BETH NOLAN *[Signature]*

SUBJECT: SSCI Request for the PFIAB Deutch Report

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Purpose

To decide how to respond to the SSCI's request for a copy of the PFIAB report on CIA's handling of the Deutch matter.

Background

The Senate Select Committee on Intelligence has requested a copy of the PFIAB's Deutch report ("Assessment of Proposed Findings by the Central Intelligence Agency Accountability Review Board in regard to The Investigation into Improper Handling of Classified Materials by Former Director of Central Intelligence John Deutch"). The report, which was transmitted to you on April 27, has been closely held with copies provided to only the DDCI, who requested the review, myself, two members of the NSC staff, and one copy to Justice. The SSCI has held numerous hearings on the Deutch matter. To accommodate the SSCI's interest in the PFIAB's review Warren briefed the Chairman of the SSCI on his conclusions in May. (Senator Bryan was invited, but did not attend the briefing).

We see three options for responding to the SSCI's request. (We would respond in the same manner to a HPSCI request.)

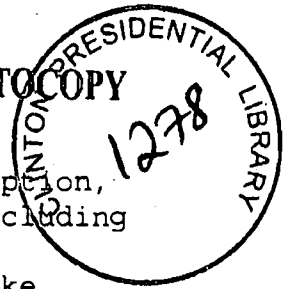
1. Decline Request/Assert Privilege if Necessary

You have made unprecedented use of the PFIAB/IOB for intelligence oversight. The boards have proven valuable mechanisms for getting you background from within the executive branch on difficult issues that do not, or appear to not, warrant Justice investigation. With the exception of the Guatemala and DOE counterintelligence reports, which you

cc: Vice President
Chief of Staff

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specifically intended for public release from their inception, PFIAB/IOB reports have not been shared with the Hill, including those on Somalia, Middle East intelligence analysis, nonproliferation, BWC/CW, and Bosnia/Iran (i.e., Holbrooke, Galbraith).

Inroads into the written product of the Board, where such product was not intended to be made public, could undermine the viability of the PFIAB as a presidential oversight tool. To the extent the PFIAB is perceived by executive employees as a conduit to the Congress, employees may be chilled from raising concerns to the PFIAB, or chilled in the manner in which they do so. Further, the President and his immediate senior advisors may be less likely to ask the PFIAB questions, if they know that at the end of each such question will come congressional access to the PFIAB's product. The PFIAB itself may consciously or subconsciously modify the manner in which it reports to you. Finally, we are wary of the PFIAB being enlisted into charged Hill debates, which could erode the Board's tradition of nonpartisan objectivity.

The surest way to protect against such risks is to decline to provide the report to the Committees and be prepared to assert privilege. The downside of doing so is that it risks assertions that the Administration is covering up the matter and could make the PFIAB report the issue, rather than the underlying facts; this takes on particular resonance in the context of the larger issue of Administration protection of national security secrets (e.g., DOE, Los Alamos, State).

As a matter of constitutional law and practice, the Office of Legal Counsel advises that a deliberative report of this sort is generally protected by executive privilege. However, we have not yet requested that OLC engage in the formal analysis that is necessary were you to actually assert privilege, including consideration of whether any congressional interest outweighs the executive's interest in deliberative and confidential communications. Beth notes that while the report is in part factual, it is also a deliberative and confidential report to the President on the performance of a cabinet officer. You successfully asserted privilege against an Independent Counsel over a similar Counsel's Office report regarding Mike Espy's conduct. Thus there is precedent in a parallel, but arguably more difficult grand jury setting, for asserting privilege, which precedent could erode as a practical matter if we pick and choose between those reports we will release. A claim of privilege would be particularly well founded where the Executive

has already engaged in an effort to accommodate the Committee's interest with a briefing and where the Committee's legitimate need for information for legislative purposes can be fulfilled through its own inquiry of the same witnesses.

2. Show the Report to the Chairman and Ranking Members of the Intelligence Committees

The existence of an appropriate privilege does not necessitate its use. While it is likely, as a practical matter, to be harder to assert privilege over later PFIAB/IOB reports should we share this report with the Hill, this report could be distinguished from other PFIAB reports because the question presented to the PFIAB came from the DDCI. This option may satisfy the Committee, or it may simply increase the appetite for the whole Committee to review the report, and thus, we may yet return to options 1 and 3.

3. Produce and Make Public

The surest way to avoid congressional confrontation is to produce the report. If we provide the report to the Committee, we need also to consider whether to make the report public in order to eliminate the risk of selective quotation and leaks; this, of course, would be highly prejudicial to the individuals dealt with in the report.

Warren defers to you on the handling of this report.

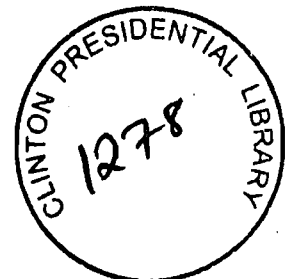
RECOMMENDATION

That we decline the Committee's request and subsequent congressional requests for the PFIAB report on the understanding that you would ultimately be prepared to assert executive privilege over the report if need be. (If pressed, we would be prepared to authorize Warren to brief the full Committees on his conclusions.)

Approve _____ Disapprove _____

Attachment

Tab A Incoming Correspondence



NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

3228 Redo

June 13, 2000

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ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: JAMES E. BAKER *JB*

SUBJECT: SSCI's Request for PFIAB Deutch Report

You asked that I shorten the attached memo to three pages and add a paragraph stating the risks of not providing the SSCI access to the report. Beth reviewed the earlier draft of the memo and concurs in the recommended course: that we decline the Committee's request on the understanding that the President would be prepared to assert privilege, following formal DOJ review of the matter. The legal discussion on privilege reflects Beth's views and input.

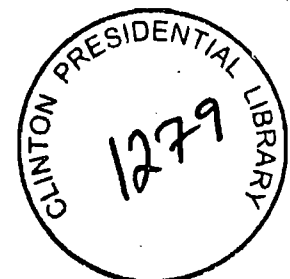
You should know that the SSCI has also requested from CIA copies of all the material drawn from DCI Deutch's computer. Consistent with the Cutler memorandum practice, CIA has referred approximately 300-400 pages of material having White House equities to the NSC for determination as to whether it should be provided to the Congress, and if so under what conditions. Included are memoranda to the President and the Vice President as well as excerpts from a daily diary recounting conversations with EOP officials, including the President. It will likely take us at least a week to review this material in order to make an informed recommendation to you on how we should proceed as I am the only staff person CIA has authorized to have access to the documents. Among other things, we will need to determine if the memoranda to the President were actually received.

RECOMMENDATION

That you sign the memorandum at Tab I.

Attachments

Tab I Memorandum for the President
Tab A Incoming Correspondence



NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20504

May 24, 2000

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ACTION

MEMORANDUM FOR SAMUEL R. BERGER

FROM: JAMES E. BAKER ^{JB}

SUBJECT: Response to SSCI's Request for the PFIAB Report
Re Deutch Investigation

Janie
• Need to cut to 3p
• Need to add
one para of
notes/downsides
to option one.

Q

The SSCI has requested a copy of the PFIAB's report on the findings by the CIA's Accountability Review Board regarding the Deutch investigation on the handling classified material. At Tab I is a memorandum for the President recommending he decline the Committee's request. Beth has reviewed the memo in draft and concurs in the recommended course: that we decline the Committee's request on the understanding that the President would be prepared to assert privilege, following formal DOJ review of the matter. The legal discussion on privilege reflects Beth's views as well as my own.

The NSC received the incoming correspondence on May 11, 2000.

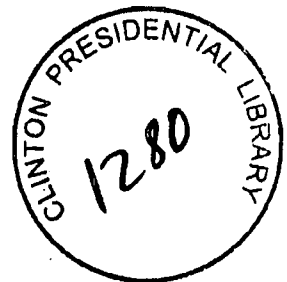
Concurrence by: ^{JB} Mary McCarthy and Miles Lackey

RECOMMENDATION

That you sign the memorandum at Tab I.

Attachments

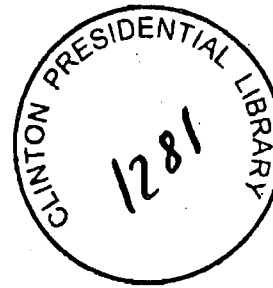
Tab I Memorandum for the President
Tab A Incoming Correspondence



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3228

THE WHITE HOUSE
WASHINGTON



ACTION

MEMORANDUM FOR THE PRESIDENT

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FROM: SAMUEL BERGER
BETH NOLAN

SUBJECT: Response to SSCI's Request for the PFIAB Report
Re Deutch Investigation

Purpose

To decide how to respond to the SSCI's request for a copy of the PFIAB report on CIA's handling of the Deutch matter.

Background

The Senate Select Committee on Intelligence requested a copy of the PFIAB's "Assessment of Proposed Findings by the Central Intelligence Agency Accountability Review Board in regard to The Investigation into Improper Handling of Classified Materials by Former Director of Central Intelligence John Deutch." The report, which was transmitted to you on April 27, is closely held with copies provided to only the DDCI, who requested the review, myself, two members of the NSC staff, and one copy to Justice.

The DDCI proceeded with disciplinary action against the five current, or former, senior Agency staff, specifically cited by the PFIAB. Each of these employees will have access to that segment of the report addressing his or her actions. In addition, you have spoken directly with George regarding the CIA's handling of the Deutch matter. The SSCI has held numerous hearings on the Deutch computer matter. To accommodate the SSCI's interest in the PFIAB's independent look at the issue, and with our concurrence, Warren briefed the Chairman of the SSCI on his general conclusions in May. (Senator Bryan was invited, but did not attend the briefing.)

We see three options for responding to the SSCI's request. (We would respond in the same manner to a HPSCI request.)

cc: Vice President
Chief of Staff



1. Decline Request/Assert Privilege if Necessary

Your Administration has made unprecedented use of the PFIAB and IOB for intelligence oversight. The boards proved to be a valuable mechanism for you to get background information from within the executive branch on difficult issues that do not, or appear to not, warrant Justice investigation. However, increased use of these Boards has resulted in increased visibility outside the White House. Where it was once unthinkable that the PFIAB would brief the Congress, such briefings are increasingly routine as the Boards seek to accommodate congressional interest in their work. However, with the exception of the Guatemala and DOE counterintelligence reports, which you intended for public release from their inception, PFIAB/IOB reports are not shared with the Hill, including those on Somalia, Middle East intelligence analysis, nonproliferation, BWC/CW, and Bosnia/Iran.

Inroads into the written product of the Board, where such product is not intended to be made public, could seriously undermine the viability of the PFIAB as a presidential oversight tool.

- To the extent the PFIAB is perceived by executive employees as a conduit to the Congress, employees may be chilled from raising concerns to the PFIAB or chilled in the manner in which they do so.
- Further, the President and his immediate senior advisors may be less likely to ask the PFIAB questions, if they know that at the end of each such question will come a congressional fight over access to internal discussions.
- The PFIAB itself may consciously or subconsciously modify the manner in which it presents issues to the President or his senior advisers if they believe they will then need to defend those same judgments on the Hill.
- Finally, we are wary of the PFIAB being enlisted into one side or another of a charged congressional debate, which could undermine the PFIAB's long-standing tradition of nonpartisan objectivity.

The surest way to protect against such risks is to decline to provide the report to the Committees and be prepared to assert privilege if necessary. In the national security context, you



have asserted privilege once over Haiti documents and were prepared to do so with the Bosnia report.

As a matter of constitutional law and practice, the Office of Legal Counsel advises that a deliberative report of this sort is generally protected by executive privilege. However, we have not yet requested that OLC engage in the formal analysis that is necessary were you to actually assert privilege, including consideration of whether congressional interest outweighs the executive's interest in deliberative and confidential communications.

We consider the PFIAB report to fall squarely within the zone of protected communications. While the report is in part factual, it is also a deliberative and confidential report to the President on the performance of a cabinet officer. You successfully asserted privilege against an Independent Counsel over a similar Counsel's Office report regarding Mike Espy's conduct. Thus there is precedent in a parallel, but arguably more difficult grand jury setting, which precedent could erode as a practical matter if we pick and choose between those reports we will release.

A claim of privilege would be particularly well founded where the Executive has already engaged in an effort to accommodate the Committee's interest with a briefing and where the Committee's legitimate need for information for legislative purposes can be fulfilled through its own inquiry of the same witnesses. However, in an effort to further accommodate congressional interest, we are prepared to have Warren brief the full Committees on his conclusions.

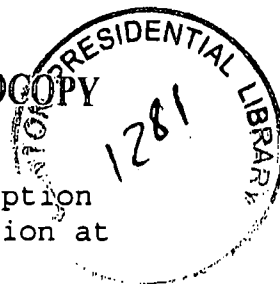
2. Show the Report to the Chairman and Ranking Members of the Intelligence Committees

The existence of an appropriate privilege does not necessitate its use. On the one hand, as a practical matter it may be harder to assert privilege over later PFIAB/IOB reports once a precedent for doing so is set. On the other hand, this report is qualitatively distinguishable from other reports over which you have been prepared to assert privilege because the question presented to the PFIAB came from the DDCI, not the President.

There are two advantages to showing the report to the select Members. First, by providing access to select Members of the Committee, the Executive would avoid groundless assertions that the Administration is covering up the matter and deflect any

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effort to make the White House the issue. Second, this option would avoid the distraction of a congressional confrontation at this time.

Nonetheless, a show option risks erosion of the PFIAB/IOB's unique presidential status, without the certainty that it would satisfy the Committees' interest; and thus, it will likely return us to options 1 and 3.

3. Produce and Make Public

The surest way to avoid congressional confrontation is to produce the report to the Committees. The PFIAB report is sufficiently comprehensive that it may help to put this issue behind us, allowing focus on prospective procedural remedies rather than retrospective assessment of blame.

However, if we provide the report to the Committees, we recommend that the report be made public as a matter of fairness. This action would eliminate the risk of selective quotation and leaks, giving all actors in this unfortunate situation an opportunity to address the same facts and the same record at the same time.

Warren defers to you on the handling of this report.

RECOMMENDATION

That we decline the Committee's request and subsequent congressional requests for the PFIAB report on the understanding that you would ultimately assert executive privilege over the report if need be.

Approve _____

Disapprove _____

That in the event of significant push back from the Committee, we would be prepared to authorize Warren to brief the full Committees as he has already briefed the Committee Chair.

Approve _____

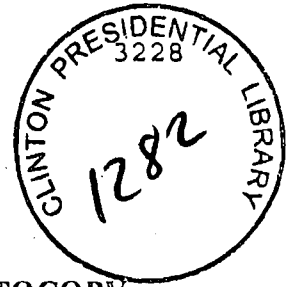
Disapprove _____

Attachment

Tab A Incoming Correspondence

DELIBERATIVE

THE WHITE HOUSE
WASHINGTON



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ACTION

MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BETH NOLAN

SUBJECT: SSCI Request for the PFIAB Deutch Report

Purpose

To decide how to respond to the SSCI's request for a copy of the PFIAB report on CIA's handling of the Deutch matter.

Background

Deutch Report

The Senate Select Committee on Intelligence has requested a copy of the PFIAB's "Assessment of Proposed Findings by the Central Intelligence Agency Accountability Review Board in regard to The Investigation into Improper Handling of Classified Materials by Former Director of Central Intelligence John Deutch." The report, which was transmitted to you on April 27, has been closely held with copies provided to only the DDCI, who requested the review, myself, two members of the NSC staff, and one copy to Justice. The SSCI has held numerous hearings on the Deutch matter. To accommodate the SSCI's interest in the PFIAB's review Warren briefed the Chairman of the SSCI on his conclusions in May. (Senator Bryan was invited, but did not attend the briefing.)

We see three options for responding to the SSCI's request. (We would respond in the same manner to a HPSCI request.)

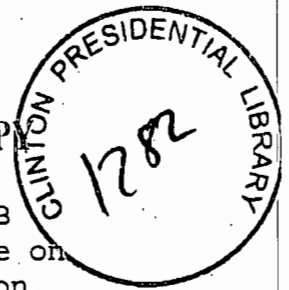
1. Decline Request/Assert Privilege if Necessary

You have
~~Your Administration~~ has made unprecedented use of the PFIAB/IOB for intelligence oversight. The boards have proven valuable mechanisms for getting you background from within the executive branch on difficult issues that do not, or appear to not, warrant Justice investigation. With the exception of the Guatemala and DOE counterintelligence reports, which you

cc: Vice President
Chief of Staff

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specifically intended for public release from their inception, PFIAB/IOB reports have not been shared with the Hill, including those on Somalia, Middle East intelligence analysis, nonproliferation, BWC/CW, and Bosnia/Iran (*i.e. Hillbrooke, ~~Don~~ Galbraith*).

Inroads into the written product of the Board, where such product was not intended to be made public, could undermine the viability of the PFIAB as a presidential oversight tool. To the extent the PFIAB is perceived by executive employees as a conduit to the Congress, employees may be chilled from raising concerns to the PFIAB, or chilled in the manner in which they do so. Further, the President and his immediate senior advisors may be less likely to ask the PFIAB questions, if they know that at the end of each such question will come a congressional ~~right~~ ~~over~~ access to the PFIAB's product. The PFIAB itself may consciously or subconsciously modify the manner in which it reports to you. Finally, we are wary of the PFIAB being enlisted into charged Hill debates, which could erode the Board's tradition of nonpartisan objectivity.

The surest way to protect against such risks is to decline to provide the report to the Committees and be prepared to assert privilege. The downside of doing so is that it risks ~~groundless~~ assertions that the Administration is covering up the matter and could make the PFIAB report the issue, rather than the underlying facts.

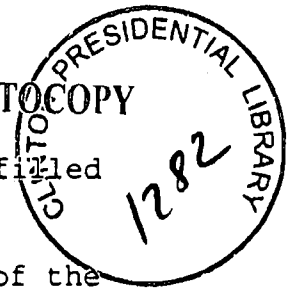
This takes on particular resonance in the context of the larger issue of administration protection of national security secrets
As a matter of constitutional law and practice, the Office of Legal Counsel advises that a deliberative report of this sort is generally protected by executive privilege. However, we have not yet requested that OLC engage in the formal analysis that is necessary were you to actually assert privilege, including consideration of whether any congressional interest outweighs the executive's interest in deliberative and confidential communications. Beth notes that while the report is in part factual, it is also a deliberative and confidential report to the President on the performance of a cabinet officer. You successfully asserted privilege against an Independent Counsel over a similar Counsel's Office report regarding Mike Espy's conduct. Thus there is precedent in a parallel, but arguably more difficult grand jury setting, for asserting privilege, which precedent could erode as a practical matter if we pick and choose between those reports we will release. A claim of privilege would be particularly well founded where the Executive has already engaged in an effort to accommodate the Committee's interest with a briefing and where the Committee's legitimate

(e.g. DOE, Posthumous, State).

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need for information for legislative purposes can be fulfilled through its own inquiry of the same witnesses.

2. Show the Report to the Chairman and Ranking Members of the Intelligence Committees

is likely
The existence of an appropriate privilege does not necessitate its use. While it ~~may~~, as a practical matter, be harder to assert privilege over later PFIAB/IOB reports should we share this report with the Hill, this report ~~is qualitatively~~ *could be distinguished* distinguishable from other PFIAB reports because the question presented to the PFIAB came from the DDCI. This option will ~~deflate any congressional effort to make the PFIAB report the issue, but without certainty that it will satisfy the Committees' interests, and thus, we may yet return to options 1 and 3.~~

3. Produce and Make Public

may satisfy the committee, or it may simply increase the appetite to show the whole committee
The surest way to avoid congressional confrontation is to produce the report. ~~The PFIAB report is sufficiently comprehensive that it may help put this issue behind us, allowing focus on prospective procedural remedies rather than retrospective assessment of blame. However, If we provide the report to the Committees, we would recommend that the report be made public. This would eliminate the risk of selective quotation and leaks, giving all actors in this unfortunate situation an opportunity to address the same facts and the same record at the same time.~~

to
Warren defers to you on the handling of this report.

RECOMMENDATION

One of course would be highly prejudicial to the individuals dealt with in the report
That we decline the Committee's request and subsequent congressional requests for the PFIAB report on the understanding that you would ultimately be prepared to assert executive privilege over the report if need be. (If pressed, we would be prepared to authorize Warren to brief the full Committees on his conclusions.)

Approve _____

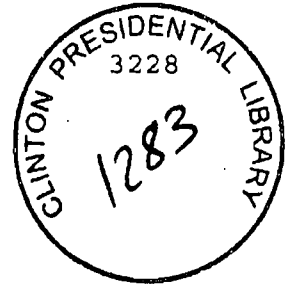
Disapprove _____

Attachment

Tab A Incoming Correspondence

DELIBERATIVE

THE WHITE HOUSE
WASHINGTON



ACTION

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MEMORANDUM FOR THE PRESIDENT

FROM: SAMUEL BERGER
BETH NOLAN

SUBJECT: Response to SSCI's Request for the PFIAB Report
Re Deutch Investigation

Purpose

To decide how to respond to the SSCI's request for a copy of the PFIAB report on CIA's handling of the Deutch matter.

Background

The Senate Select Committee on Intelligence ~~has~~ requested a copy of the PFIAB's "Assessment of Proposed Findings by the Central Intelligence Agency Accountability Review Board in regard to The Investigation into Improper Handling of Classified Materials by Former Director of Central Intelligence John Deutch." The report, which was transmitted to you on April 27, ~~has been~~ is closely held with copies provided to only the DDCI, who requested the review, myself, two members of the NSC staff, and one copy to Justice.

The DDCI ~~has~~ proceeded with disciplinary action against the five current, or former, senior Agency staff, specifically cited by the PFIAB. Each of these employees will have access to that segment of the report addressing his or her actions. In addition, you have spoken directly with George regarding the CIA's handling of the Deutch matter. The SSCI has held numerous hearings on the Deutch computer matter. To accommodate the SSCI's interest in the PFIAB's independent look at the issue, and with our concurrence, Warren briefed the Chairman of the SSCI on his general conclusions in May. (Sen. Bryan was invited, but did not attend the briefing.)

We see three options for responding to the SSCI's request. (We would respond in the same manner to a HPSCI request.)

cc: Vice President
Chief of Staff

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[Handwritten note: "Look for the White House"]
set

1. Decline Request/Assert Privilege if Necessary

information

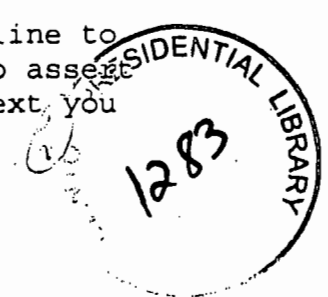
Your Administration has made unprecedented use of the PFIAB and IOB for intelligence oversight. The boards have proved to be a valuable mechanism for you to get [all the] background from within the executive branch on difficult issues that do not, or appear to not, warrant Justice investigation. However, increased use of these boards has resulted in increased visibility. Where it was once unthinkable that the PFIAB would brief the Congress on any matter, such briefings are now increasingly routine as the Boards seek to accommodate Congressional interest in their work. However, with the exception of the Guatemala and DOE counterintelligence reports, which you intended for public release from their inception, PFIAB/IOB reports [have not been] shared with the Hill, including those on Somalia, Middle East intelligence analysis, nonproliferation, BWC/CW and Bosnia/Iran.

Set

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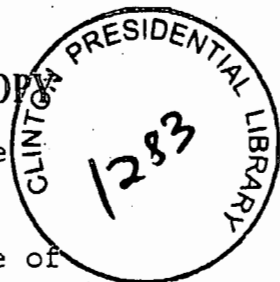
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- Further, the President and his immediate senior advisors may be less likely to ask the PFIAB questions, if they know that at the end of each such question will come a Congressional fight over access to internal discussions.
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- Finally, we are wary of the PFIAB being enlisted into one side or another of a charged Congressional debate, which could undermine the PFIAB's longstanding tradition of nonpartisan objectivity.

The surest way to protect against such risks is to decline to provide the report to the Committees and be prepared to assert privilege if necessary. In the national security context, you



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As a matter of constitutional law and practice, the Office of Legal Counsel advises that a deliberative report of this sort is generally protected by executive privilege. However, we have not yet requested that OLC engage in the formal analysis that is necessary were you to actually assert privilege, including consideration of whether ~~any~~ ^{the} Congressional interest outweighs the executive's interest in deliberative and confidential communications.

We consider the PFIAB report to fall squarely within the zone of protected communications. While the report is in part factual, it is also a deliberative and confidential report to the President on the performance of a cabinet officer. You successfully asserted privilege against an Independent Counsel over a similar Counsel's Office report regarding Mike Espy's conduct. Thus there is precedent in a parallel, but arguably more difficult grand jury setting, which precedent could erode as a practical matter if we pick and choose between those reports we will release.

A claim of privilege would be particularly well founded where the Executive has already engaged in an effort to accommodate the Committee's interest with a briefing and where the Committee's legitimate need for information for legislative purposes can be fulfilled through its own inquiry of the same witnesses. However, in an effort to further accommodate Congressional interest, we ~~would~~ ^{are} be prepared to have Warren brief the full Committee on his conclusions.

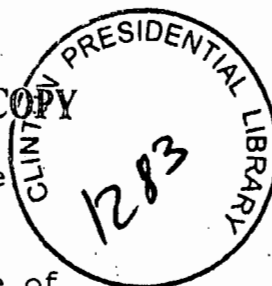
2. Show the Report to the Chairman and Ranking Members of the Intelligence Committee

The existence of an appropriate privilege does not necessitate its use. On the one hand, as a practical matter it may be harder to assert privilege over later PFIAB/IOB reports once a precedent for doing so is set. On the other hand, this report is qualitatively distinguishable from other reports over which you have been prepared to assert privilege because the question presented to the PFIAB came from the DDCI, not the President.

There are two advantages to showing the report to the select Members. First, by providing access to select Members of the Committee the Executive would avoid groundless assertions that the Administration is covering up the matter and deflect any

DELIBERATIVE

³ CLINTON LIBRARY PHOTOCOPY



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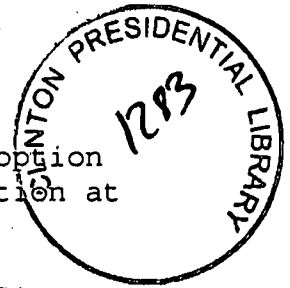
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effort to make the White House the issue. Second, this option would avoid the distraction of a Congressional confrontation at this time.

Nonetheless, a show option risks erosion of the PFIAB/IOB's unique presidential status, without the certainty that it would satisfy the Committees' interest; and thus, it will likely return us to options 1 and 3.

3. Produce and Make Public

The surest way to avoid Congressional confrontation is to produce the report to the Committees. The PFIAB report is sufficiently comprehensive that it may help to put this issue behind us, allowing focus on prospective procedural remedies rather than retrospective assessment of blame.

However, if we ^{Action} provide the report to the Committees, we would recommend that the report be made public as a matter of fairness. This would eliminate the risk of selective quotation and leaks, giving all actors in this unfortunate situation an opportunity to address the same facts and the same record at the same time.

Warren defers to you on the handling of this report.

RECOMMENDATION

That we decline the Committee's request and subsequent Congressional requests for the PFIAB report on the understanding that you would ultimately be prepared to assert executive privilege over the report if need be.

Approve _____ Disapprove _____

That in the event of significant push back from the Committee, we would be prepared to authorize Warren to brief the full Committees as he has already briefed the Committee Chair.

Approve _____ Disapprove _____

Attachment

Tab A Incoming Correspondence